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Governor

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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

September 5, 2007

CERTIFIED RETURN RECEIPT  
7005 2570 0000 4801 8045

Ben McInnes  
Decorative Landscaping  
15848 South 580 East  
American Fork, Utah 84003

Subject: Proposed Assessment for Cessation Order MC2007-03-05, Decorative Landscaping, T & M Holdings, S0350023, Salt Lake County, Utah

Dear Mr. McInnes:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Paul Baker, on July 17, 2007. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-2007-03-05 Violation 1 of 1 \$2860

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information, which was submitted, by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made. If you feel that you are eligible for good faith, you should supply relevant information to the assessment officer within 15 days of the violation abatement date so that it can be factored into the final assessment.

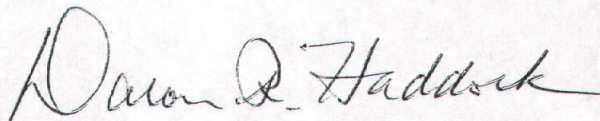


Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director, Associate Director or appointed Conference Officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the final assessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock  
Assessment Officer

Enclosure: Worksheets

cc: Vickie Southwick, Exec. Sec.  
Vicki Bailey, Accounting

P:\GROUPS\MINERALS\WP\M035-SaltLake\S0350023-DecorLandscape\non-compliance\MC2007-03-05\proAssessment-CO.doc



**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Decorative Landscaping/T & M Holdings PERMIT S0350023

NOV / CO # MC-2007-03-05

VIOLATION 1 of 1

ASSESSMENT DATE September 5, 2007

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>MC2005-03-02</u>	<u>3/17/2005</u>	<u>5</u>
<u>MC2006-03-03</u>	<u>5/04/2006</u>	<u>5</u>

**TOTAL HISTORY POINTS 10**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?



2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. An inspection of this site conducted by Paul Baker on July 6, 2007, found areas of mining related disturbance, which are not part of a current mining permit. Approximately 7.83 acres of disturbance has been created at this site while only 5 acres are allowed under the small mine NOI. The Operator had not amended the current plan to conduct mining activities in this expanded area. Disturbance has actually occurred. Twenty points are assigned.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that the operator has disturbed approximately 1.83 acres of land that had not been approved for disturbance. The damage is the loss of vegetation and soil resources from the area disturbed as the result of mining operations conducted without an approved permit. While the soil and vegetation have been disturbed, the site could still be reclaimed. There seemed to be more potential for damage rather than actual damage, so I am assessing points in the lower 1/3 of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?                       
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS                     

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*



III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE NegligenceASSIGN NEGLIGENCE POINTS 8

## PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *The inspector indicated that the violation was the result of the Operator's indifference to the DOGM regulations. The Operator did not adequately control the workers on the site and allowed them to conduct activities that were not approved. Excavating rock from the site took place without first getting approval and this showed lack of reasonable care. A prudent operator would understand the need to receive approval of an amendment prior to creating additional disturbance. The Operator was negligent in this regard, thus the assignment of points in the mid-part of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?  
IF SO--EASY ABATEMENT

## Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	



\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- |   |   |             |
|---|---|-------------|
| X | Rapid Compliance  | -11 to -20* |
|   | (Permittee used diligence to abate the violation)   |             |
| X | Normal Compliance   | -1 to -10*  |
|   | (Operator complied within the abatement period required)  |             |
| X | Extended Compliance   | 0           |
|   | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) |             |
|   | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)   |             |

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *The abatement has not yet been completed so good faith points cannot be awarded at this time. The Operator has until October 15, 2007 to complete the seeding for the site. Once the abatement has been completed, this category can be looked at again and any good faith points can be awarded at that time.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-07-03-05</u>	
I. TOTAL HISTORY POINTS	<u>10</u>
II. TOTAL SERIOUSNESS POINTS	<u>28</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u>-</u>
TOTAL ASSESSED POINTS	<u>46</u>
 TOTAL ASSESSED FINE	 <u>\$ 2,860</u>



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**BEN MCINNES  
DECORATIVE ENTERPRISES INC  
1584 SOUTH 580 EAST  
AMERICAN FORK UTAH 84003**

2. Article Number

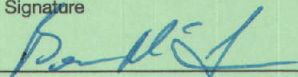
(Transfer from service label)

PS Form 3811, August 2001

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X



☐ Agent

☐ Addressee

B. Received by (Printed Name)

*Ben McInnes*

C. Date of Delivery

*9/11/07*

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

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☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

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ORDER MC2007-03-05 S/0035/0023

VICKIE SOUTHWICK  
DIVISION OF OIL GAS MINING  
1594 WEST NORTH TEMPLE SUTIE 1210  
SALT LAKE CITY UTAH

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DIV. OF OIL, GAS & MINING



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